

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
	)	
W.R. GRACE & CO., et al.,	)	Case No. 01-1139(JKF)
	)	
Debtors.	)	Jointly Administered
	)	

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**ARROWOOD'S COUNTER DESIGNATIONS AND OBJECTIONS TO  
BNSF RAILWAY COMPANY'S CONFIDENTIAL INITIAL DEPOSITION  
DESIGNATIONS OF TESTIMONY OF JEFFERY POSNER, RICHARD FINKE, JAY  
HUGHES, AND PETER VAN N. LOCKWOOD**

**EXHIBIT B**

Dated: August 20, 2009  
New York, New York

Garvan F. McDaniel, Esq. (#4167)  
BIFFERATO, GENTILOTTI LLC  
800 N. King Street, Plaza Level  
Wilmington, DE 19801  
(302) 429-1900 Phone  
(302) 429-8600 Fax

-and-

Carl J. Pernicone, Esq.  
WILSON, ELSER, MOSKOWITZ  
EDELMAN & DICKER, LLP  
150 East 42nd Street  
New York, NY 10017-5639  
Telephone: (212) 490-3000

-and-

Tancred Schiavoni, Esq.  
Gary Svirsky, Esq.  
O'MELVENY & MYERS LLP  
7 Times Square  
New York, New York  
(212) 326-2267

*Counsel to Arrowood Indemnity  
Company, f/k/a Royal Indemnity Company*

Deposition Designation Key:

AR = ARROWOOD  
OBJ = OBJECTION  
CDC = COUNTER DESIGNATION FOR COMPLETENESS  
R = RELEVANCE  
BE = BEST EVIDENCE  
CLC = CALLS FOR LEGAL CONCLUSION  
IH = INCOMPLETE HYPOTHETICAL

LF = LACKS FOUNDATION  
CFS = CALLS FOR SPECULATION  
S = SPECULATIVE  
H = HEARSAY  
LPK = LACKS PERSONAL KNOWLEDGE  
AFNE = ASSUME FACT NOT IN EVIDENCE  
ET = EXPERT TESTIMONY

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----X  
In Re: Chapter 11  
Case No.  
01-01139 JKF  
W.R. Grace & Co., et al.,  
(Jointly  
Debtors. Administered)

-----X  
- - -  
May 6, 2009  
- - -

DEPOSITION of JEFFREY POSNER, held  
at the offices of Kirkland & Ellis, 655  
Fifteenth Street, N.W., Washington, DC,  
commencing at 9:08 A.M., on the above  
date, before Lisa Lynch, a Registered  
Merit Reporter, New Jersey Certified Court  
Reporter, License No. XI00825, and  
Certified Realtime Reporter

- - -  
MAGNA LEGAL SERVICES, LLP  
7 Penn Center, 8th Floor  
1635 Market Street  
Philadelphia, PA 19103  
1.866.MAGNA.21

1 policy referenced under Paragraph 9 as  
2 applicable between 1950 and 1953?

3 A. I don't know, sitting  
4 here.

5 (Royal Indemnity Company  
6 declaration sheets and endorsements  
7 SA-870, 891, 939, 945-946 received  
8 and marked for identification as  
9 Posner Exhibit 10.)

10 Q. Mr. Posner, I've marked  
11 another collection of documents as Exhibit  
12 10.

13 MR. KOVACICH: For counsel,  
14 this is the dec sheets and  
15 endorsements that are Bates stamped  
16 SA 870, 891, 939 and 945, also 946.

17 Q. First, Mr. Posner, do you  
18 recognize Exhibit 10.

19 MS. DeCRISTOFARO: Excuse  
20 me. What are you marking as 10?

21 MR. KOVACICH: The Royal  
22 Indemnity declaration pages and  
23 policy endorsements that were at  
24 the top of the materials that were

1           passed around the room.

2           A.     Yeah. I mean, I recognize  
3     the declarations page. It appears to be  
4     the Royal Indemnity policy that was issued  
5     to the Zonolite Company, this one being  
6     from March 31st, 1953 to March 31st,  
7     1954.

8           Q.     I want to ask you a few  
9     questions about the coverages. Some of  
10    the language is difficult to read. On the  
11    first page, SA 870, do you see the section  
12    marked Limits of Liability?

13          A.     Yes.

14          Q.     And there's a Subsection A,  
15    bodily injury liability. Do you see  
16    that?

17          A.     Yes.

18          Q.     And it indicates \$200,000  
19    under the first block?

20          A.     Yes.

21          Q.     And does that say "each  
22    person"?

23          A.     I believe so.

24          Q.     And then the next, moving



1 over to the right, is 400,000 and what  
2 does it say above that, if you can read  
3 it?

4 A. I think it says "each  
5 accident".

6 Q. And then moving over from  
7 there, the next one would be \$400,000  
8 aggregate products?

9 A. Certainly I believe it says  
10 "aggregate". I think it says "products"  
11 but I'm not -- to be honest with you, I'm  
12 not -- I'm not sure, sitting here, without  
13 a magnifying glass but it would appear to  
14 say that.

AR's  
OBJ:  
LF  
S

15 Q. And that would be  
16 consistent with your recollection of the  
17 Royal Indemnity policies that there was an  
18 aggregate coverage limit which applied to  
19 products coverage, right?

20 MR. SCHIAVONI: Objection  
21 to form, no foundation. The  
22 witness wasn't there in 1953.

23 MS. ESAYIAN: Are you  
24 asking about all Royal Indemnity

AK's  
OBJ:  
LF  
S

1 policies issued to Zonolite? The  
2 way that -- objection to the  
3 question as vague as phrased.

4 Q. You recall generally --  
5 well, let me ask a few more questions.

6 Mr. Posner, you managed Grace's  
7 insurance coverage for a number of years.  
8 That was your testimony earlier, right?

9 A. Correct, yes.

10 Q. And one of the things that  
11 you did in your role for Grace was seek  
12 coverage on behalf of Grace from its  
13 insurance carriers, right?

14 A. Yes.

15 Q. And in doing that, one of  
16 the insurance carriers from whom you  
17 sought coverage was Royal Indemnity,  
18 right?

19 A. Correct.

20 Q. And before you sought  
21 coverage from Royal Indemnity, you would  
22 have familiarized yourself with the terms  
23 of the Royal Indemnity policies, right?

24 A. Yes.



1 MS. ESAYIAN: Royal  
2 Indemnity policies issued to W.R.  
3 Grace? Is that what all your  
4 questions are about so far?

5 MR. KOVACICH: Well, this  
6 particular dec page --

7 MS. ESAYIAN: Is it issued  
8 to Zonolite Company as predecessor  
9 to Grace? I want to be clear what  
10 Royal policies you're asking  
11 about.

12 BY MR. KOVACICH:

13 Q. Did you -- in your role as  
14 a representative of W.R. Grace, did you  
15 review not only the Royal Indemnity  
16 policies issued to Grace but also those  
17 policies issued to its predecessor, the  
18 Zonolite Company?

19 A. Yeah, let me back up  
20 because it's getting a little complicated  
21 here. I don't know that Royal Indemnity  
22 issued policies to Grace. I know Royal  
23 did. Whether that was Royal Indemnity or  
24 not, I'm not quite sure. I'm operating

1 under the assumption that we're talking  
2 about the Royal Indemnity policies issued  
3 to the Zonolite Company, a copy of which  
4 is one of the policies you put in front of  
5 me. I'm operating under the assumption  
6 that this discussion was centering around  
7 this particular policy.

8 Q. Okay, and your assumption  
9 is correct. That's what I'm intending to  
10 ask you about.

11 You are familiar with the terms of  
12 those policies based on the work that you  
13 did on behalf of W.R. Grace, right?

14 A. I was familiar with the  
15 terms in the policies. Obviously, my  
16 familiarity has dimmed over the years but  
17 I was familiar with it at one time.

18 Q. Well, do you recall that  
19 those particular policies included  
20 aggregate limits applicable to products  
21 coverage?

22 MR. SCHIAVONI: Objection  
23 to form. No foundation that this  
24 witness was in any way involved in